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Annual report of the United Nations High Commissioner for Human Rights

Addendum

Report of the United Nations High Commissioner for Human Rights on the activities of his office in Guatemala*

Summary

The present report provides an overview of the situation of human rights in Guatemala and the work undertaken by the Office of the United Nations High Commissioner for Human Rights in Guatemala (OHCHR-Guatemala) during 2014.

In the context of elections to high-level posts in the justice sector, the High Commissioner describes progress and challenges to judicial independence and the fight against impunity, including transitional justice. He highlights persisting high levels of violence, which particularly affect women, and outlines the response strategies of security institutions. He describes the insecure environment in which human rights defenders work, and the outstanding challenges in ensuring the rights of indigenous peoples. The causes of social unrest, particularly in indigenous territories,** human rights impacts and the response provided by the State are identified. Issues related to the right to food, access to land and labour rights are also addressed, and a section on business and human rights is incorporated.

* The summary of the present report is being circulated in all official languages. The report itself, which is annexed to the summary, is being reproduced in English and Spanish only.

** The term territories is used in the report in accordance with article 13, paragraph 2, of International Labour Organization Convention No. 169 (1989) concerning Indigenous and Tribal Peoples in Independent Countries.

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The report also includes a summary of activities undertaken by OHCHR-Guatemala, including the roll-out of the second phase of the Maya Programme (funded by Norway) integrating activities with rights holders and duty bearers for the realization of the rights of indigenous peoples through strategic litigation.

The report concludes with recommendations to improve the situation of human rights.

Annex

[English and Spanish only]

Report of the United Nations High Commissioner for Human Rights on the activities of his office in Guatemala

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I. Introduction

1. On 10 January 2005, the United Nations High Commissioner for Human Rights signed an agreement with the Government of Guatemala for the establishment of a country office (OHCHR-Guatemala). Under the agreement, OHCHR-Guatemala monitors the human rights situation and advises State institutions and civil society. The agreement was extended in March 2014 for a third time, for three years.

2. The Deputy High Commissioner visited Guatemala from 19 to 22 May 2014, and met with high-level State officials, civil society organizations, indigenous authorities and representatives of the international community.

II. National context

3. The political landscape was marked by advance campaigning by several political parties for the 2015 presidential, legislative and municipal elections. The newly appointed authorities of the Supreme Electoral Tribunal temporarily suspended 11 of the 28 political parties for violating the law on electoral campaigning. Some of the sanctioned parties filed injunctions (*amparos*) to try to overturn those decisions.

4. The gross domestic product (GDP) of Guatemala registered 3.6 per cent growth, but tax revenue fell to 10.8 per cent of GDP.[1] The World Bank declared Guatemala as the country with the lowest public spending in the world in relation to the size of its economy.[2] An example of the seriousness of the situation was the severe crisis in the health system, with shortages of medical supplies and overdue salary payments.

5. A prolonged drought severely affected the population living in the "dry corridor" — Chiquimula, Jutiapa, Jalapa, Baja Verapaz, El Progreso, Zacapa and Quiché departments — placing 275,625 families in a situation of food insecurity. Corn and bean production fell by 80 per cent and 63 per cent, respectively. In August, Congress declared a state of emergency (*calamidad pública*) in 16 departments. The Government initiated, among other actions, an action plan to provide food, but the plan benefited only 168,000 affected families.

6. In October, the Government and the United Nations signed the United Nations Development Assistance Framework 2015–2019. OHCHR-Guatemala contributed to the Framework by incorporating a human rights approach and reflecting the commitments made by Guatemala through the universal periodic review.

III. Overall human rights situation

7. Selection for high-level positions in the Supreme Electoral Tribunal, the Attorney General's Office (Ministerio Público), the Supreme Court, the Appeals Court and the Office of the Controller General took place in 2014. Selection processes failed to observe international standards, and were marked by legal uncertainty and interference by private interests (see paras. 18–22 below). Civil society actors filed injunctions against the appointments on account of those irregularities, and the Constitutional Court temporarily suspended congressional appointment of judges to the Supreme Court and the Appeals

[1] Instituto Centroamericano de Estudios Fiscales, press release (http://icefi.org/wp-content/uploads/2014/09/Comunicado-proyecto-presupuesto-2015.pdf).

[2] World Bank, *Guatemala Economic DNA: Harnessing Growth* (2014), p. 9.

Court. However, it later decided that the judges should be sworn in. This, together with general discontent over the work of the Nominating Commissions and Congress, highlighted the challenges to judicial independence and impartiality in the country.

8. The reactivation of the Congressional Working Group on Security and Justice in March[3] enabled debates on major legislative initiatives, such as the Law to Implement the Rome Statute of the International Criminal Court, the Public Order Law, the Organic Law of the Attorney General's Office and articles of the Civil Code relating to the legal age for marriage. However, by December, those initiatives had yet to be passed into law.

9. In September, the Plan to Develop a Democratic Criminal Justice Policy was signed under the leadership of the Attorney General's Office. It was structured around prevention, investigation, punishment and social reintegration. The act represents the Government's commitment to develop a policy with multisectoral participation and a gender perspective.

10. The right to life continued to be affected by widespread violence and crime, although the number of homicides decreased in comparison with 2013. The National Institute of Forensic Sciences (INACIF) reported 5,924 violent deaths, of which 13 per cent were of women. This represents an average of 16 homicides per day and a 2.4 per cent reduction over 2013.[4] However, there was a 8.8 per cent increase in homicides in the capital,[5] where most of the joint military and police task forces operate. In addition, there were 156 reported cases of lynching, which resulted in 17 deaths and 136 people injured.[6]

11. Human rights defenders continued to perform their work in an insecure environment. OHCHR-Guatemala registered attacks and media campaigns that stigmatized them and impeded their work. Some government officials publicly questioned their work and their cooperation with international human rights mechanisms (see paras. 45–50 below).

12. There were several cases of discrimination against lesbian, gay, bisexual, transgender and intersex (LGBTI) individuals, as well as family violence, sexual harassment and harassment in the workplace.[7] The Presidential Commission for Coordinating Executive Policy in the Field of Human Rights (COPREDEH) and the Human Rights Ombudsman's Office actively sought to address various forms of discrimination and drafted guidelines for a public policy for the LGBTI population.

13. In many cases, indigenous peoples turned to social protest in the face of the ineffectiveness of the high-level dialogues with the authorities or because they were not involved in decision-making. Their main demands were the right to self-determination, consultation, nationalization of electricity, approval of the comprehensive rural development law, and the repeal of several laws. However, only the Law for the Protection of Vegetable Production was repealed by Congress, as it was found detrimental to the right to food.

14. The Human Rights Ombudsman's Office continued to strengthen its regional offices and its interventions in order to prevent human rights violations in situations of eviction, states of emergency and social conflicts.

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[3] The Working Group is a forum created by Member of Congress Oliverio Garcia Rodas to promote legislative initiatives relating to security and justice, and comprised of State institutions, civil society organizations and other sectors.

[4] INACIF data for January–December 2014.

[5] Ibid.

[6] Human Rights Ombudsman's Office (Institución del Procurador de los Derechos Humanos), data for January–June 2014.

[7] Source: Human Rights Ombudsman's Office.

15. The High Commissioner welcomes the adoption by the Government, in October, of a reparations policy (which included a budget allocation approved in November[8]) to address violations of the human rights of communities displaced by the construction of the Chixoy hydroelectric dam in 1975.[9] After the victims' decades-long pursuit of justice, it is hoped that this unprecedented policy will substantially improve their living conditions.

16. Between October 2013 and September 2014, approximately 17,000 unaccompanied Guatemalan children were detained at the southern border of the United States of America.[10] Violence and a lack of opportunities were invoked as the principal reasons for that migration.[11] Their possible massive repatriation from the United States and Mexico brought to light the limited local capacity to receive and reintegrate migrants, in particular unaccompanied children. In July, a legislative initiative was introduced to protect migrant children, which has yet to be approved.

17. The Inter-American Commission on Human Rights and the Inter-American Court of Human Rights closely monitored the human rights situation. In 2014, the Commission held seven thematic hearings and issued eight press releases on issues such as militarization of security and the situation of human rights defenders.[12] The Court issued two orders declaring Guatemala in contempt for violation of its obligation to comply with 13 of its judgements.[13] It also reiterated that provisions adopted domestically could not be used as justification for non-compliance with its rulings, including in the case of amnesties, even if they came from the highest court in the country (see para. 27).[14]

IV. Justice

A. Independence of the judiciary and selection and appointment of high-level judicial authorities

18. The processes for selecting high-level judicial authorities entrusted to Nominating Commissions were characterized by the lack of objective and transparent criteria to evaluate the candidates' merits, suitability and moral standard. Nor was the inclusion of ethnic diversity promoted. The recommendations made by the High Commissioner,[15] the Special Rapporteur on the independence of judges and lawyers[16] and the Inter-American Commission on Human Rights[17] to prevent this situation were not taken into account. Nor were most of the interpretative guidelines of the Constitutional Court, which were in line

[8] State Income and Expenditure Budget for 2015, Decree 22-2014, art. 52.

[9] Governmental Decision 378-2014.

[10] United States Department of Homeland Security, "Southwest border unaccompanied alien children". www.cbp.gov/newsroom/stats/southwest-border-unaccompanied-children.

[11] Office of the United Nations High Commissioner for Refugees (UNHCR), *Children on the Run. Unaccompanied Children Leaving Central America and Mexico and the Need for International Protection* (2014).

[12] Inter-American Commission on Human Rights, "CIDH presenta caso sobre Guatemala a la Corte IDH". www.oas.org/es/cidh/prensa/comunicados.asp.

[13] See www.corteidh.or.cr/docs/supervisiones/11_Casos_21_08_14.pdf; and www.corteidh.or.cr/docs/supervisiones/Rio_Negro_y_Gudiel_21_08_14.pdf.

[14] See www.corteidh.or.cr/docs/supervisiones/11_Casos_21_08_14.pdf, para. 15.

[15] A/HRC/22/17/Add.1, para. 100 (d) and www.ohchr.org.gt/noticia.asp?idnoticia=163, 18 September 2014.

[16] OHCHR, press release, 3 March 2010, www.ohchr.org/SP/NewsEvents/Pages/DisplayNews.aspx?NewsID=10792&LangID=S.

[17] Press release, 27 September 2014. www.oas.org/es/cidh/prensa/comunicados/2014/108.asp.

with international standards.[18] The Constitutional Court established that the term of the former Attorney General (Fiscal General) would end in May and not December, and her name was not included in the final list sent by the Nominating Commission to the President even though she had obtained the second highest score among the candidates.

19. Attacks and threats were directed against judges and prosecutors involved in high-impact cases, to the detriment of judicial independence. There were also media and social media campaigns aimed at discrediting their work. Those attacks were reported to have discouraged potential candidates from seeking appointment to high-level judicial posts.

20. Civil society organizations and individuals did valuable social auditing of the selection processes together with the Human Rights Ombudsman, the International Commission against Impunity in Guatemala (CICIG) and OHCHR-Guatemala. Nearly 100 legal challenges were filed, as well as injunctions against decisions adopted by Nominating Commissions and Congress.

21. In October, the resignation of an Appeals Court judge (who had been re-elected to her post) over irregularities during the selection process was supported by numerous judges, reflecting the general discontent about the work of the Nominating Commissions. In response to this and to the above-mentioned legal challenges, the Constitutional Court issued a ruling that provisionally suspended the swearing in of judges to the Supreme Court and the Appeals Court.[19] As a result, private individuals filed complaints against four Constitutional Court judges who signed the ruling for violating the Constitution and abuse of authority. However, an impeachment request against those judges was eventually rejected by the Supreme Court.

22. A thorough analysis of the current model for selecting and appointing judicial officials is essential with a view to guaranteeing judicial independence. This will require a comprehensive review of the legal framework, including the Constitution, the Law on Nominating Commissions, the Law on the Judiciary and the Law on the Judicial Career.

B. Fight against impunity

23. The new Attorney General and her Office maintained coordination and cooperation with CICIG in high-impact cases, such as the one related to a corruption network in the prison system, in which both prison officials and detainees were implicated; the case of a corruption network in the judiciary, made up of public officials and private citizens; and the case of an organized criminal network operating in the Petén and Izabal departments. In October, a contract killer was sentenced to 90 years in prison for the 2013 murder of lawyer Lea de León.[20] In June, a Swiss court convicted the former Director of the National Civil Police and sentenced him to life in prison for extrajudicial executions at the Pavón penitentiary.[21]

24. High-risk courts have played a crucial role in combating impunity for past and present human rights violations. In 2013 and 2014, they had a high rate of effectiveness and reduced the backlog of cases. In 2013, 60 cases were presented and 67 judgements handed down; 42 cases were presented and 78 judgements were handed down in 2014.[22] However, some judges, faced constant attacks and intimidation, including one who has handled major

[18] Judgement of 13 June 2014, file 2143-2014.
[19] Consolidated case files 4639-2014, 4645-2014, 4646-2014 and 4647-2014.
[20] See A/HRC/25/19/Add.1, para. 33.
[21] Ibid., para. 23.
[22] Judiciary, data for January–June 2014.

transitional justice cases. In April, the Honour Tribunal of the Guatemalan Bar Association imposed a public reprimand on the latter, suspended her from practicing law for one year, and fined her for allegedly offending one of the lawyers of former Head of State Efraín Ríos Montt during his trial in 2013. The sanction was reduced to a private reprimand on appeal.

25. The judiciary continued to make important progress in non-criminal justice to expedite proceedings, decrease backlogs and facilitate access for rights holders. Progress was made in drafting reforms to the Code of Civil and Commercial Procedure. In August, the Centre for Family Justice was established in the capital, which includes infrastructure changes and the creation of a judicial body with specialized jurisdiction over cases involving domestic violence.

C. Transitional justice

26. The issues raised by the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights, including resistance to international scrutiny on transitional justice cases, are of high concern. Nonetheless, there was progress in some criminal investigations, and prosecutions continued into cases of grave human rights violations committed during the internal armed conflict. In October, a case of sexual violence against a group of indigenous women in the Sepur Zarco military base in 1982–1983 was brought to trial. On 18 December, the Constitutional Court issued a resolution that allows for the reopening of the trial of Efraín Ríos Montt for the crime of genocide.[23] Also, at the time of writing, a judgement was awaited with regard to the deaths of 37 people during the occupation and burning of the Spanish embassy in 1981. In July, the Criminal Court (Tribunal de Sentencia Penal) of Chimaltenango convicted a member of a non-State armed group for the 1988 massacre of 22 people in El Aguacate. In other cases, such as the 1978 Panzós massacre and the finding of military records in Cobán (the Diario Militar case), testimonies were given before the trials began due to the advanced age of the witnesses. Still, many cases remained unpunished. In July, the Criminal Court of Cobán acquitted those accused of the 1983 enforced disappearance of two brothers from Tactic, Baja Verapaz.

27. The debate over the applicability of amnesty provisions continued. Over 50 per cent of Appeals Court judges recused themselves from resolving an injunction issued by the Constitutional Court requesting them to decide whether Decree Law 8-86, which offers amnesty for common political and other related crimes, should apply to Efraín Ríos Montt.[24] In that regard, the Constitutional Court recognized that the jurisprudence of the Inter-American Court of Human Rights was binding[25] and part of the body of constitutional law. The Court reiterated that extinction of criminal liability on the grounds of a statute of limitations or due obedience was not applicable, and that States could not invoke provisions in domestic law that impeded the prosecution of grave human rights violations.[26] It also recognized the imprescriptible character of "crimes against humanity" as stipulated in article 378 of the Penal Code, in line with the State's duty to apply *jus cogens* norms.[27] Despite this, the State continued to invoke the primacy of internal amnesty provisions before regional and international human rights mechanisms.

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[23] Consolidated case files 154-2014, 155-2014, 183-2014 and 239-2014.

[24] A/HRC/25/19/Add.1, para. 30.

[25] Case files 2295-2013 and 3340-2013.

[26] Case file 2295-2013. See also A/HRC/25/19/Add.1, para. 30.

[27] Case file 3340-2013.

28. In May, Congress passed a non-binding resolution expressing that it was "legally unviable" that the crime of genocide could have been committed in Guatemala.[28] OHCHR-Guatemala considers that the resolution may interfere with judicial independence and impartiality. The High Commissioner reiterates that the obligation to investigate, prosecute and sanction grave human rights violations and crimes against humanity is a peremptory norm (*jus cogens*); therefore, any act contrary to such obligations is considered null and void.[29]

29. Ten years after the National Reparations Programme was established, there is still uncertainty over its selection criteria, delays in the processing of requests for compensation of up to seven years, and a lack of measures to guarantee comprehensive reparation for victims.

30. The handing over of declassified military documents to the General Archives of Central America in August is an important step towards the realization of victims' rights to truth and justice. Institutional safeguarding of those archives is critical and should be established through a proper legal framework.

D. Justice and indigenous peoples

31. Indigenous peoples continued to face barriers in accessing the justice system. However, some progress identified in previous years continued.[30] The judiciary's Centre for Indigenous Legal Translation and Interpretation was instrumental in guaranteeing access to justice for indigenous peoples in their own languages. In 2014, the Centre supported 1,901 hearings, in 19 indigenous languages, held by different jurisdictional bodies located in departments with majority indigenous populations.[31] The Indigenous Peoples Department of the Attorney General's Office drew up an action plan to improve access to justice. The measure was recommended in an institutional assessment carried out with OHCHR-Guatemala technical assistance. To overcome the weaknesses diagnosed, the plan proposes reforms to internal regulations as well as specialized training for interpreters, especially on victim assistance.

32. In a ruling issued in February, the Injunctions Chamber of the Supreme Court of Justice in February denied the existence of indigenous jurisdiction,[32] which represents a serious reversal of existing jurisprudence, including by the Supreme Court,[33] which recognized the decisions of indigenous authorities.

33. The Third Chamber of the Court of Appeals, Civil and Commercial Division, granted an injunction to the Sipakapense Maya Council in San Marcos Department, who claimed a lack of consultation prior to the concession of the exploration licence for "Los Chocoyos" mine. Although the Court allowed the licence to stand, it urged the Ministry of Energy and Mines not to fail to carry out the obligations acquired by the State of Guatemala with regard to indigenous peoples' rights in the future.[34]

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[28] Resolution 3-2014, 13 May 2014.
[29] A/HRC/22/17/Add.1, para. 100 (m).
[30] See A/HRC/25/19/Add.1, para. 37.
[31] Judiciary, Indigenous Affairs Unit, data for January–October 2014.
[32] Case file 1552-2012, p. 8.
[33] A/HRC/25/19/Add.1, para. 36.
[34] Case file 01010-2013-00234, March 2014.

E. Persons deprived of liberty

34. The prison system continues to face serious challenges. While it has a capacity for 6,492 detainees, 18,204 people, almost half of whom were in pretrial detention, were deprived of liberty as at August 2014.[35]

35. As previously reported,[36] lack of control within the prisons continued, along with criminal activity perpetrated by structures involved in grave human rights violations within and outside the penitentiary system. This was reflected in a CICIG-led investigation leading to the criminal prosecution of high-level officials of the penitentiary system, inmates (among them former army captain Byron Lima Oliva, convicted for the assassination of Bishop Juan Gerardi in 1998) and others, for influence peddling, illicit association and money laundering.

36. The High Commissioner welcomes the adoption, in September, by the Ministry of the Interior of the institutional model for attention to children and adolescents with parents and/or legal guardians deprived of liberty, women deprived of liberty and female penitentiary guards, with the support of Colectivo Artesana. It is hoped that the ongoing process of drafting a penitentiary policy, with broad participation of civil society, will address some of the challenges.

37. Despite some improvements in infrastructure and equipment at the Federico Mora Hospital in compliance with the precautionary measures issued in 2012 by Inter-American Commission on Human Rights in favour of 334 patients,[37] significant challenges remain.[38] Those include guaranteeing medical attention appropriate for each pathology, reducing the use of solitary confinement and adopting measures to prevent violence.

V. Security

38. Within the framework of the Covenant for Security, Justice and Peace, steps were made towards a comprehensive approach to violence prevention, including the approval, in August, of the National Policy for Violence and Crime Prevention, Citizen Security and Peaceful Coexistence 2014–2034. However, the Government's response to violence and insecurity remained predominantly reactive and without a focus on structural causes.

39. In comparison with 2013, the number of police officers increased from 163 to 188 per 100,000 inhabitants, with a total of 29,798 active officers.[39] However, working conditions, such as low salaries and a lack of equipment and fuel, continued to affect the operational capacity of the National Civil Police.[40]

40. Violent incidents were registered during police operations, essentially due to the lack of appropriate operational protocols, equipment and training. In May, in San José del Golfo, Guatemala, 11 demonstrators were injured, the majority by tear gas projectiles, while police cleared the entrance to the El Tambor mine. In August, in Samacoch, Alta Verapaz, three indigenous people were killed by gunfire and eight were wounded, allegedly by police agents, during the clearing of a road block. In November, in Sanarate El Progreso, a community member was injured during a protest and subsequently died. In

[35] Directorate-General of the Penitentiary System, data for January–August 2014.
[36] A/HRC/25/19/Add.1, para. 39.
[37] See www.oas.org/en/iachr/decisions/precautionary.asp, tab "2012".
[38] **Error! Hyperlink reference not valid.**Garantizar_DDHH_en_HospFMora(7dic14).pdf.
[39] Source: National Civil Police (as at September 2014).
[40] Source: Ministry of the Interior.

those situations, some police officers were also victims of violence — nine police officers were injured in San José del Golfo, six in Samacoch and seven in Sanarate.

41. In addition, military participation in citizen security increased. Joint military/police patrols were made up of a majority of military personnel.[41] The presence of Reserve Army Squads for Citizen Security was extended from 2 to 12 departments in two years,[42] and the military officially took part in guarding detention centres.[43] Information was also received regarding armed soldiers giving classes, inter alia in family planning, in schools in Guatemala and Huehuetenango.[44]

42. The army continued to participate in task forces with the police, but this has not resulted in visible improvements in security. In two areas of the capital where the Maya (zone 18) and Kaminal (zones 7 and 12) task forces operate, the number of attempted murders and homicides increased by 5 per cent and 38.8 per cent respectively, despite a decline in 2012 when the task forces began operations.[45]

43. Of all violent deaths, 85.4 per cent were due to firearms, a 4.3 per cent increase from 2013.[46] A national disarmament plan has yet to be proposed and challenges remain in the registration and control of firearms and munitions. The Directorate-General of Arms and Munitions Control (DIGECAM) reported that it had registered only 56.7 per cent of the nearly 500,000 privately owned firearms before registration deadline at the end of April.[47] The remaining 214,023 were pending legalization, along with another estimated 800,000 unregistered firearms.[48] A debate was also initiated on the proposed destruction of the more than 49,000 firearms deposited at DIGECAM.

44. Only 24 of the 151 registered private security companies were assessed to be in compliance with Decree 52-2010, which regulates private security services.[49] The General Bureau of Private Security Services increased actions to control private security companies. However, major challenges persist, such as training and certification of guards and improvement of their working conditions. Only 477 of the estimated 46,000 private security agents are certified. Several cases illustrate the consequences of insufficient oversight on these companies. In July, a woman was killed and a police officer wounded when a private security guard suffering from schizophrenia opened fire in a pharmacy in Guatemala City. In October, two private security guards were apprehended in Mixco, Guatemala, for the kidnapping and murder of a 62-year-old woman.

VI. Human rights defenders

45. The Unit for the Protection of Human Rights Defenders of Guatemala (UDEFEGUA) reported a decline in assassinations of human rights defenders in

[41] Composition: 19,096 from the National Civil Police, compared to 20,113 from the army, at September 2014.

[42] Source: Ministry of Defence.

[43] Government decision 304-2014.

[44] Source: Ministry of Defence.

[45] There were 32 more homicides in the area patrolled by the Kaminal Task Force, compared to the situation before it was established in 2013. National Civil Police, data for January–August 2014.

[46] Ibid.

[47] Source: DIGECAM.

[48] Instituto de Enseñanza para el Desarrollo Sostenible, *Control de armas de fuego: Manual para la construcción de la paz por la sociedad civil* (2006). http://iepades.com/wp-content/uploads/2013/10/pv_control-de-armas-de-fuego.pdf.

[49] Directorate-General of Private Security Services, data for January–December 2014.

comparison with 2013, with seven recorded as at September,[50] but there was an increase in the number of attacks, particularly against women defenders.[51] The victims were mainly defenders of land-related rights and of indigenous peoples' rights, and journalists.

46. The work of human rights defenders was also obstructed by arrests and criminal prosecution. In Chiquimula, five people, including a journalist, were arrested during a national demonstration in September and released after three days for lack of evidence. In February, in Montaña de las Granadillas, Zacapa, landowners accused 14 community leaders, who were defending the right to water, of aggravated robbery. Although the Attorney General's Office did not find evidence to press charges, the case remained open.

47. Despite some progress, high levels of impunity persist for the killing of human rights defenders, as in the cases of eight trade union members and four journalists assassinated in 2013. The CICIG analysis of the investigation undertaken by the Attorney General's Office between 2004 and 2013 of 56 cases of homicide of trade unionists identified serious shortcomings. Only two convictions were obtained in those cases in 2014.[52]

48. Human rights defenders continued to operate in an environment marked by media smear campaigns. The previous Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, a Guatemalan national, also became the victim of such campaigns. In addition, some high-level authorities publicly questioned the work of foreign human rights defenders, accusing them of interfering in the country's internal affairs. That led to the cancellation of the resident visas of two international volunteers from Peace Brigades International. The High Commissioner welcomes the decision of the Minister of the Interior to reverse the cancellation following intervention by OHCHR-Guatemala.[53]

49. The Attorney General's Office recorded 71 attacks on journalists to November, an increase over the 57 cases registered in 2013. The attacks included threats by non-State actors and State agents and 30 criminal complaints by high-ranking officials. The establishment of a working group to discuss a protection plan for journalists constitutes a positive step towards the creation of a national protection mechanism for journalists with the support of the United Nations Educational, Scientific and Cultural Organization (UNESCO) and OHCHR-Guatemala.

50. The Unit for Analysis of Attacks on Human Rights Defenders of the Ministry of the Interior strengthened the division specialized in the criminal investigation of such attacks (from 8 to 22 agents), but its capacity to analyse patterns of attacks on human rights defenders remains to be strengthened.

[50] UDEFEGUA had reported 18 assassinations between January and September 2013. See A/HRC/25/19/Add.1, para. 45 and http://udefegua.org/wordpress/wp-content/uploads/2014/11/informe_anual_2013.pdf.

[51] UDEFEGUA reported 799 attacks between January and 15 November 2014 (55 per cent against women), while in 2013 it had reported 656 attacks to December 2013.

[52] CICIG, "Investigación de sindicalistas asesinados en Guatemala" (2014).

[53] See OHCHR-Guatemala, press release, www.ohchr.org.gt/documentos/comunicados/062014_ONU_DH_preocupada_por_Vulnerabilidad_defensores(7jul2014).pdf.

VII. Women's rights

A. Violence against women

51. INACIF reported 774 cases of violent deaths of women.[54] There were also 1,236 reports of femicide[55] and 281 complaints of other forms of violence against women.[56] The specialized tribunals on femicide and violence against women issued 1,400 verdicts, compared to 779 in 2013.[57] The judiciary inaugurated specialized courts in 4 departments, expanding its coverage to 11 departments.

52. OHCHR-Guatemala carried out an analysis of judgements in cases of femicide and other forms of violence against women, and identified an important difference in the application of the law between specialized courts and ordinary courts. Women in rural areas do not benefit from protection and redress, as they do not have access to the specialized jurisdiction. Some shortcomings found in the treatment of violence against women in ordinary courts include the application of the principle of prosecutorial discretion to reject a case; changes in the definition of crimes; lack of analysis of other types of discrimination such as ethnic and age-based; and gender stereotypes in the reasoning of decisions. The Inter-American Court of Human Rights, in its July judgement on the murder of an adolescent, María Isabel Veliz Franco, in 2001, established that gender stereotypes had had a negative influence on the investigation, as they had shifted blame for what happened onto the victim and her family members, shutting down other possible lines of investigation.[58]

B. Sexual and reproductive rights

53. According to the Ministry of Health, 363 pregnancies of girls aged 10 to 13 were registered, as well as 50,791 of girls aged 14 to 18. By the end of 2014, there could be a 3 per cent increase in teenage pregnancies compared to 2013.[59]

54. There were 7,221 deaths of children under 5. Of those, 72.9 per cent were infants under one year old. Almost half died in the first 27 days following their birth, mainly due to complications in the perinatal period and respiratory diseases, most of them preventable with adequate prenatal care.[60]

VIII. Rights of indigenous peoples

55. The recently created Cabinet for Indigenous Peoples and Intercultural Affairs is a very positive step, but the need for higher level interlocutors to address the demands of indigenous peoples remains. The will expressed by the Government to address the issue of multiculturalism was not reflected in recent policies, such as the Plan for Private Investment in Rural Territories or the National Policy for Violence and Crime Prevention, Citizen Security and Peaceful Coexistence.

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[54] INACIF, data for January–December 2014.
[55] Judiciary, data for January–September 2014.
[56] Attorney General's Office, data to August 2013.
[57] Attorney General's Office, data for January–August 2014.
[58] Inter-American Court of Human Rights, *Veliz Franco y otros* v. *Guatemala*, judgement of 19 May 2014.
[59] Ministry of Health, data for January–September 2014.
[60] Ibid.

56. In November, the Presidential Commission on Discrimination and Racism against Indigenous Peoples in Guatemala (CODISRA) started discussions with civil society to prepare an agenda for 2015–2024 to celebrate the International Decade for People of African Descent, with a focus on recognition, justice and development.

Lands, territories and natural resources

57. Important progress was made in the restitution of indigenous communal properties. In October, the Constitutional Court confirmed a judgement from a lower court recognizing the collective property rights of the indigenous community of Chuarrancho[61] and declaring void earlier alterations in the registry.[62] Progress continued towards recognition of the principle of collective land management in protected areas, such as in the six communities of the Sierra de Santa Cruz, where collective property rights were registered in the Property Registry Office (Registro de la Propiedad Inmueble). However, there remain serious obstacles to indigenous peoples' efforts to recover the ancestral lands taken from them during the internal armed conflict. One hundred and seventy-four land conflicts in protected natural areas remain unsolved.[63]

58. There was an increase in conflicts over the exploitation of natural resources in indigenous territories. Oftentimes, governmental responses included the declaration of states of emergency and excessive use of force (see para. 40 above), despite the existence of the National Dialogue System.[64]

59. In San Juan Sacatepéquez, the division in the community provoked by the construction of a cement plant and a road was aggravated in recent years in the wake of several episodes of violence and the presence of unidentified armed groups. OHCHR-Guatemala called for an investigation to dismantle those groups. It also condemned the massacre of nine people and acts of violence against women in the indigenous community of Los Pajoques in September. The President declared a state of emergency (*estado de prevención*), the second since 2008 in the area. The High Commissioner recalls that states of emergency are not means to resolve social conflicts.[65] The passing by Congress of the reform to the Public Order Law, which regulates states of emergency, in line with international human rights standards, will constitute an important step.

60. One of the main sources of tensions among indigenous communities, State authorities and private corporations was the lack of consultation in the context of the construction of hydroelectric projects. Communities opposed 14 of the 36 hydroelectric plants being constructed or planned. In view of the State's lack of intervention to guarantee that indigenous people are fully informed and consulted, some companies made direct contact with the communities, which in many cases led to divisions within communities, given the failure to observe their traditional forms of organization and decision-making. In other cases, the dialogue between the companies and the communities was successful.

61. Despite the institutional strengthening of the National Dialogue System, the response to conflicts through dialogue was limited. In the case of the Santa Rita

[61] Case supported by the Maya Programme.

[62] File 628-2013, p. 20.

[63] Secretariat for Agrarian Affairs, "Informe de monitoreo de política y conflictividad agraria de Guatemala", September 2014. http://issuu.com/direccionmonitoreosaa/docs/informe_monitoreo_saa_septiembre_20.

[64] The National Dialogue System is an institution under the executive branch aimed at addressing social conflicts.

[65] A/HRC/19/21/Add.1, para. 17.

hydroelectric project, in Alta Verapaz, even though an agreement had been reached with most of the Q'eqchi' communities, the division generated in the communities led to the forced eviction in August of community members opposed to the project. In San José del Golfo, Guatemala, despite the existence of a dialogue mechanism, the lack of agreement between the parties led the company to bring in machinery, aided by government forces. The high-level dialogue in northern Huehuetenango was interrupted in May following the burning of machinery and facilities of a hydroelectric project in San Mateo Ixtatán.

IX. Economic and social rights

A. Right to food

62. According to the Secretariat for Food Security (SESAN), chronic malnutrition among children under the age of 5 in the municipalities prioritized by the Zero Hunger Plan diminished by 1.7 percentage points between 2012 (59.9 per cent) and 2013 (58.2 per cent), approaching the annual reduction of 2 per cent set by the Government.[66] Nonetheless, the change was due to a 6.1 per cent reduction in urban areas, whereas rural areas showed a 1.1 per cent increase.[67]

63. The Ministry of Health registered 13,919 cases of acute malnutrition, a 16 per cent decrease in relation to 2013.[68] However, it confirmed that 130 children had died from causes related to acute malnutrition, an increase from the 116 cases recorded in 2013.[69]

64. At the local level, the Zero Hunger Plan was useful in providing guidance to relevant institutions on the destination of resources. Important challenges to its implementation remain, including the need for greater involvement of mayors to guarantee access to drinking water and sanitation, to strengthen the income-generation component, and to establish controls to prevent the political use of social programmes. The decision by the Ministry of Health to cancel 84 contracts with civil society organizations in charge of offering health services to 2.5 million people in rural areas jeopardized the interventions planned by the Government.

B. Monocultures and access to land

65. In the past 10 years, the area occupied by four cash crops – coffee, sugar cane, palm oil and rubber – increased by 40 per cent, while the area occupied by basic food crops decreased by 37.5 per cent. Out of the total arable land devoted to cultivation, 28.3 per cent is for export cash crops, while 25.4 per cent is used to grow basic food crops.[70]

66. OHCHR-Guatemala received complaints from communities in Escuintla, Suchitepéquez and Retalhuleu about the impact of the expansion of monoculture on their rights to food and health. Complaints highlighted the limitations on access to land to grow basic food crops due to tripled land prices, the diversion of rivers to irrigate large plantations, and the impact of aerial spraying of sugar cane crops. Pollution of rivers and

[66] SESAN, *Evaluación de Impacto del Plan del Pacto Hambre Cero, Tomo II: Situación Socioeconómica de Hogares* (2014). www.sesan.gob.gt/index.php/descargas/52-evaluacion-de-impacto-ii-tomo-ii/file.

[67] Ibid.

[68] SESAN, data for January– October 2014.

[69] Source: Ministry of Health (November 2014).

[70] National Statistics Institute, National Agricultural Survey 2013.

discharge of waste from some sugar refineries reportedly led to an increase in diseases among the population. SESAN conducted initial monitoring in the department of Retalhuleu, confirming the problems. Notwithstanding the economic activity in those departments, they register the highest rates of acute malnutrition.[71]

67. The Agrarian Policy, adopted in October, includes positive elements, such as a programme providing access to land, a mechanism to address the situation of 37,000 families still living under the labourer-tenant farming regime (*régimen de mozo colonato*), and a scheme to contain the expansion of monocultures through local taxation. The implementation of the policy requires the adoption of the bill on the comprehensive rural development system, which was pending approval by Congress.

68. The Land Fund (FONTIERRAS) has resolved the situation of 100 of the 123 farms with agrarian debt.[72] In February and August, 140 families, previously evicted from the Polochic valley, were relocated. Despite the Government's commitment to relocate the remaining 628 evicted families by the end of 2014, land was purchased for only 100 families.[73] The main obstacles continue to be high land prices and the limited resources of the Land Fund.

C. Labour rights

69. OHCHR-Guatemala continued to receive complaints regarding serious violations of agricultural workers' labour rights, including about salaries below the daily minimum wage (US$ 10). On some coffee farms, for example, in San Marcos, daily salaries range between $5 and $6, on African palm plantations in the Northern Strip and Sayaxché, Petén, salaries are less than $8 per day, and on sugar cane plantations some of the day labourers receive daily salaries of less than $8.60.

70. In the agricultural sector, OHCHR-Guatemala observed the practice of conditioning salaries on reaching productivity goals imposed unilaterally by the companies. As a result, overtime is not remunerated and workers' physical integrity and health have been affected.

71. The Ministry of Labour continued to verify respect for labour rights, and noted serious violations in certain sectors. Of the 702 export companies (*maquilas*) inspected, only 13 per cent paid the minimum wage, and only 15 of the 44 banana companies visited on the Southern Coast did so.[74]

72. During the year, an important congressional debate was sparked by government law initiatives on investment and employment, hourly work and reforms to the Labour Code. While according to the Government and the business sector the initiatives could foster investment and generate employment, trade unions indicated that their adoption would weaken workers' rights and the monitoring ability of the Labour Inspectorate.

73. OHCHR-Guatemala received information of employees being dismissed for creating trade unions in the rural sector. The persistent failure to implement judicial orders to reinstate workers who have been illegally dismissed was evidenced in San José el Rodeo, San Marcos, in the case of 39 workers who, despite a judicial decision, had not been reinstated 30 months after their dismissal. In another case related to freedom to form trade unions, workers of the Ternium company who had been dismissed in March 2012 for establishing the first trade union could only be reinstated in December 2014, after several

[71] Source: Ministry of Health.

[72] See also A/HRC/25/19/Add.1, para. 67.

[73] Ibid., para. 66.

[74] www.mintrabajo.gob.gt/index.php/leyes-conveniosyacuerdos/documentos-dr-cafta.html.

judicial decisions and writs of injunction at several instances.[75] The trade union has still not been recognized legally, since the company has filed several legal actions, which are still pending in court.

74. In September 2014, under the Dominican Republic – Central America – United States Free Trade Agreement, the Government of the United States established an arbitration panel for non-compliance with the Implementation Plan established by Guatemala and the United States in April 2013 to improve labour conditions. The United States considered that key commitments of the Plan, such as the restoration of the Labour Inspectorate's competence to sanction, had not been fulfilled.[76] The International Labour Organization decided to defer until March 2015 its decision to appoint a commission of inquiry.

X. Business and human rights

75. In April, the Coordinating Committee of Agricultural, Commercial, Industrial and Financial Associations (CACIF) adopted its institutional policy on human rights. Although the policy constitutes a step forward in integrating human rights into business practices, challenges remain with regard to transparency and policies to prevent and address possible negative impacts of business activities on human rights, especially on indigenous peoples' rights.

76. The Association of Renewable Energy Producers continued to promote the implementation of its Code of Ethics amongst its 49 members. This includes the commitment to adopt a policy of transparency and access to information, respect for the legitimate representatives of the communities in the context of consultations, and the promotion of corporate social responsibility.

XI. Activities of the Office of the United Nations High Commissioner for Human Rights in Guatemala

77. OHCHR-Guatemala carried out 57 missions, including some in coordination with the Human Rights Ombudsman's Office, to observe the human rights situation, and regularly met with authorities, social organizations, indigenous communities, human rights defenders and victims and their relatives, as well as with witnesses of alleged or confirmed human rights violations. The office also monitored judicial proceedings in paradigmatic cases.

78. OHCHR-Guatemala observed the selection of high-level judicial authorities, provided the Nominating Commissions with technical assistance, and accompanied the monitoring efforts of civil society, CICIG and the United Nations system.

79. Technical assistance was provided to Congress and civil society organizations in drawing up various legislative initiatives so that they comply with international human rights standards. Support was given to the Secretariat of Food Security in drawing up a protocol that allows individuals to pursue administrative remedies to demand the realization of their right to food.

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[75] See Constitutional Court, file 3360-2013; Supreme Court, Injunction 1336-2014, 20 November 2014.

[76] Office of the United States Trade Representative. www.ustr.gov/about-us/press-office/speeches/2014/September/Remarks-by-Ambassador-Froman-on-Labor-Enforcement-Case-Against-Guatemala.

80. OHCHR-Guatemala provided technical assistance to the National Council for Persons with Disabilities (CONADI), the Supreme Electoral Tribunal and the congressional Special Committee on Disability on the rights of persons with disabilities.

81. OHCHR-Guatemala continued its training programme for judges, including those dealing with high-risk cases, and for Supreme Court and Constitutional Court legal clerks. The office updated the systematization of international standards for the website of the Constitutional Court and organized two seminars. It also conducted follow-up training for the *Amparos* Section and the Human Rights Section of the Attorney General's Office and for the Human Rights Ombudsman's Office on issues related to administration of justice.

82. Technical assistance was provided to the School of Legal Studies in analysing judgements of criminal courts on femicide and other forms of violence against women from a gender and human rights perspective.

83. OHCHR-Guatemala provided technical assistance on the rights of indigenous peoples to specialized units of the Ministry of Environment and Natural Resources, the Ministry of Energy and Mines, the National Council on Protected Areas (CONAP) and the Attorney General's Office.

84. OHCHR-Guatemala also facilitated forums for organizations of indigenous women, indigenous authorities, and the United Nations system to discuss the outcome document adopted at the World Conference on Indigenous Peoples held in September.

85. Along with civil society organizations, OHCHR-Guatemala organized a seminar on the international framework for the protection of the rights of human rights defenders. Together with UNESCO, it organized a seminar on mechanisms of protection for journalists.

86. OHCHR-Guatemala also convened a seminar on incorporating a human rights approach into the intervention in social conflict and on environmental impact studies. With the Ministry of Foreign Affairs, OHCHR-Guatemala held a round-table discussion on the Guiding Principles on Business and Human Rights.

87. In the context of the selection of judges to the highest courts, OHCHR-Guatemala and the United States Agency for International Development (USAID) organized public forums on judicial independence and freedom of expression. Forums were organized on the application of international human rights standards, the rights of LGBTI persons and the rights of unaccompanied migrant children; a meeting of experts on disarmament was also held.

88. OHCHR-Guatemala provided advice and support to social organizations in areas such as agricultural work, transitional justice, nominating commissions, security, sexual diversity, rights of indigenous peoples, persons with disabilities and human rights defenders.

89. OHCHR-Guatemala convened a multisectoral working group on transitional justice, and advised the Programme of Support for Transitional Justice of the United Nations Development Programme, and the Peacebuilding Fund.

90. Implementation of the second phase of the Maya Programme (financed by Norway) started, with training in the human rights of indigenous peoples for officials of the judiciary, the Attorney General's Office and the Public Criminal Defence Institute. Twelve indigenous organizations were selected to participate in the training programme on strategic litigation on indigenous peoples' rights.

91. To address conflict situations, OHCHR-Guatemala held periodic meetings with the National Dialogue System, the Human Rights Ombudsman's Office, the National Civil Police and the Ministry of Defence.

92. OHCHR-Guatemala and the Human Rights Ombudsman participated as honorary witnesses in the dialogue between the Government and 33 indigenous communities who were displaced by the construction of the Chixoy hydroelectric dam.

93. OHCHR-Guatemala promoted debate on human rights through press releases and conferences, interviews, public statements, meetings with journalists and the use of social networks. It organized activities for education in human rights aimed at teachers, youths and women's organizations. It submitted and disseminated the report of the High Commissioner on the activities of the Office in Guatemala during 2013 (A/HRC/25/19/Add.1), disseminated publications and organized public events. It worked with the fifth International Film Festival on Memory, Truth and Justice, and with the ninth Theatre Festival on Human Rights.

XII. Cooperation with United Nations human rights mechanisms

94. OHCHR-Guatemala started a capacity-building process with COPREDEH, with a particular focus on the work of the human rights protection mechanisms and the State's reporting obligations. It also provided technical assistance to COPREDEH in reviewing the classification of the recommendations of the United Nations human rights mechanisms.

95. OHCHR-Guatemala provided support to the Presidential Secretariat for Women in the preparation of reports to the Committee on the Elimination of Discrimination against Women, and provided technical assistance to civil society organizations in the preparation of the alternative report to the Committee on Economic, Social and Cultural Rights.

96. The High Commissioner welcomes the election of the rapporteurs of the National Office for the Prevention of Torture, in line with the provisions of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as well as the adoption of the rules of procedure and composition of its Advisory Council.

97. The State has not yet provided dates for the visits requested by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on the rights to freedom of peaceful assembly and of association, the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence and the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination.

XIII. Recommendations

98. **The United Nations High Commissioner for Human Rights urges Guatemala to implement the recommendations made in previous reports and the recommendations of the United Nations human rights mechanisms in a coordinated manner, and in consultation with civil society.**

Justice and security

99. **The High Commissioner:**

(a) Calls on the State to conduct a comprehensive review and reform of the constitutional and legal framework related to the judiciary to ensure judicial independence. The reforms should ensure the separation of administrative functions from judicial functions in the judiciary, and an independent and impartial disciplinary body that provides due process guarantees;

(b) Urges the newly appointed judges of the Supreme Court of Justice to ensure the continuity and sustainability of previous efforts at expediting proceedings, diminishing the judicial backlog and facilitating access for the rights holders, particularly in non-criminal justice;

(c) Urges the Supreme Court to continue to strengthen high-risk courts and recommends that the Attorney General's Office and all judicial authorities continue efforts to investigate human rights violations committed in the context of the armed conflict and to prosecute the perpetrators of such violations;

(d) Recalls the importance of interpreting national legislation in line with the principle that amnesties are inadmissible in cases of grave human rights violations and crimes against humanity;

(e) Reiterates the recommendation to provide the National Institute of Forensic Sciences with an adequate budget to carry out its work independently;

(f) Urges that the renewal of the mandate of the International Commission against Impunity in Guatemala be considered as an important contribution in the struggle against impunity;

(g) Calls on the judiciary to carry out specific actions aimed at strengthening indigenous peoples' access to justice and to continue to strengthen the Centre for Indigenous Legal Translation and Interpretation; and urges the Attorney General's Office to make further progress in training and specializing interpreters;

(h) Calls on the judiciary to adopt institutional policies to ensure specialized training of judges who sit on courts specialized in the issues of femicide and other forms of violence against women, and the allocation of specific funds to that end;

(i) Calls on Congress to adopt reforms to the Civil Code raising the legal age for marriage to 18, without exceptions, as established in international standards;

(j) Reiterates the recommendation to support the proposals of the National Commission for Police Reform and gradually remove the army from citizen-security tasks and the recommendation that the State formulate and implement a disarmament policy;

(k) Calls on the business sector to not contract private security firms that operate in contravention of the law and human rights standards.

Human rights defenders

100. **The High Commissioner:**

(a) Reiterates the need to improve the capacity of the Unit for the Analysis of Attacks against Human Rights Defenders to systematize relevant information, identify patterns and make tailored recommendations;

(b) Stresses the need for the judiciary to systematically investigate and prosecute attacks on human rights defenders;

(c) Urges the State to continue working towards a mechanism for protecting journalists, in broad consultation with civil society.

Indigenous peoples

101. **The High Commissioner:**

(a) Calls upon Congress to approve the bill to create a new category of environmental protection that harmonizes environmental protection with the traditional systems for the administration, use and possession of communal lands;

(b) Calls on justice institutions to recognize and respect indigenous jurisdiction in their areas of competency in accordance with international standards.

Economic and social rights

102. **The High Commissioner:**

(a) Calls on the executive branch to address the complaints that have been presented regarding the impact of monocultures in the communities that live on the Southern Coast and to initiate, by means of a dialogue with all the actors involved, a plan for the mitigation and restitution of rights;

(b) Calls for the adoption of measures to fully implement the agrarian policy, including endowing the Land Fund (FONTIERRAS) and the Secretariat for Agrarian Affairs with sufficient financial resources to perform the functions assigned to them;

(c) Urges the executive branch and Congress to promote the necessary legal reforms to reinstate the capacity of the Ministry of Labour to impose sanctions in cases where labour rights are infringed.

Business and human rights

103. **The High Commissioner calls on companies, especially those whose activities may bear a greater risk of social conflict, to align their policies with the Guiding Principles on Business and Human Rights, in order to prevent, mitigate and remedy the potential negative impact of their operations on human rights, especially on the rights of indigenous peoples.**